IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 145 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	
5	Whether it is to be circulated to the civil judge ?	

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ISMAILBHAI RASULBHAI MANSURI - Applicant(s)

Versus

MADANLAL RANGLAL ODA, & 9 - Respondent(s)

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Appearance :

MR AJ YAGNIK for Petitioner No(s).: 1.

None for Respondent No(s).: 1,2, 3, 4, 5, 6, 7, 8,9.
MR NC SOOD, LD.APP for Respondent No(s).: 0.

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CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date : 02/08/2005

ORAL JUDGMENT

1.Heard Mr.A.J. Yagnik, learned counsel appearing for the petitioner.

2. The present Revision Application is preferred against the order of acquittal passed by the ld.Additional Sessions Judge, Sabarkantha at Himatnagar, in Sessions Case No.19 of2003, arising out of complaint registered with Jadar Police Station vide C.R. No.I-18 of 2002. Total nine persons have been arrested and prosecuted for the offences punishable under Sections 147, 148 and 436 of the Indian Penal Code and Section 135 of the Bombay Police Act.

3. The incident has occurred during communal riots that has ransacked the peace of people of State of Gujarat after the Godhra Train Carnage. To deal with the say of Mr.Yagnik, it would be appropriate to narrate facts in brief.

3.1 It is the case of the prosecution that on 28th February, 2002, at about 11 p.m. mob of about 50 to 60 people mainly resident of village Oda with help of other neighbouring villages by raising shouts ransacked the residential premises and properties of people of Muslim community residing at Oda village. Number of houses were destroyed and set on fire. It is alleged that precious articles like gold jewelery

and other valuables were burnt to ashes with household articles like T.V., mattresses, etc. and the vehicles which were in the house or outside the house were also set on fire and ultimately great loss was sustained. The families of the petitioners and other Muslim community persons left the said village with their respective family and children and they had hidden themselves on the hillock area which is adjacent to their village. It is alleged that this incident was witnesses by the complainant Ismailbhai Rasulbhai and his father Rasulbhai Mansuri who are resident of village Oda and lost their properties including residential premises in the incident. Number of witnesses have said in their police statement that good amount of cash which were lying there in either cupboard or in cash box have been looted or destroyed by the mob. Even as per the say of complainant he lost cash amount of Rs.30,000/-, which was lying in his residential premises.

3.2 About the incident a detailed complaint was lodged firstly on 01st March, 2002 by Ismailbhai Mansuri, whereby he has narrated the incident in question and has described nature of damage sustained to various

properties, movable and immovable lying in the vicinity. The FIR came to be registered on the strength of the statement of the complainant on 6th March,2002 and thereafter, the investigation was going on. By that time, the concerned D.S.P. was approached on intervention of some vigilant citizens and the Investigating Officer Bhupendrasinh Jhala was directed to approach the orig. complainant. On 04th May, 2002, further statement of the complainant was recorded by the said Investigating Officer, wherein the complainant has disclosed the name of nine people who were identified and seen by him when the properties described in the complaint were being ransacked by the mob. The similar version was placed before the Investigating Agency by number of witnesses and especially the house owners whose properties were even damaged or destroyed.

3.3 After investigation the police chargesheeted all the nine persons who were named by the complainant in his first statement given to the police on 4th May, 2002 and they are tried by the ld.Sessions Judge in Sessions Case No.19 of 2003. after trial, the learned Judge held that the prosecution has failed in bringing home the charge and accused, therefore,

deserves acquittal. This order of acquittal has been assailed by way of present Revision Application.

3.4 Mr.A.J. Yagnik, learned counsel appearing for the petitioner, has taken me through judgment of the ld.trial Judge and deposition of all relevant witnesses namely the complainant Ismailbhai Mansuri and his father Rasulbhai Mansuri and two other witnesses. The complainant has given names of all the nine witnesses who have been named by him in his further statement on 4th May, 2005. The father of the complainant has given names of five accused persons and identified by him when his property was destroyed and damaged and in the statements of other witnesses, two to three accused persons in the mob were stealing or looting the properties. The learned Judge has appreciated the oral as well as documentary evidence led by the prosecution and while acquitting the accused persons, the learned Judge has mainly considered the following aspects :

(i) The complainant Ismailbhai though has given detailed FIR describing details of the damage caused to each and every property in a small village like Oda and the details of vehicle which were set on

fire and not given names of any of the accused at initial stage.

(ii) Though there was ample opportunity for the complainant to give details of the individual accused person at the earliest but no disclosure of names of accused persons till 3rd May, 2002 is found, is the material infirmity in the strength of the case of the prosecution.

(iii) Number of witnesses belonging to the community of complainant only also have not stated that the accused persons or any one of them was involved or they have turned hostile to the prosecution. So the complainant does not get corroboration from the evidence of any confident witness or any person who himself is a victim of the misdeed of the mob. Thus, there is no satisfactory corroboration.

(iv) The presence of complainant Ismail at the rooftop of his house is doubtful because rooftop of his house was damaged when the Panchanama was drawn.

(v) The complainant Ismail has made attempt to modulate the theory as to his presence in

the residential premises and even on the next day in the village Oda and according to the ld.trial Judge, it is highly improbable that the complainant was present in the village Oda on the next day.

(vi) When the father of the complainant has accepted that he had left his residence to save himself nullifies the effect of the story unfolded by him in the Examination-in-Chief. It is true that in such or similar situation, the prompt investigation or support from the State to the present victim can help the prosecution in bringing home the charge against the accused persons. But when the crime was committed at night hours and that too after 11 p.m., and the Muslim residents had either left the village or had taken shelter at their Hindu friends-well-wishers. So any of the prosecution witness could not have witnessed the incidents and hence, it was difficult for the ld.trial Judge to accept that any person present in the mob could be even

identified by any villager. Undisputedly, the witnesses were were in the mood to leave the village at the earliest so that they can save themselves. The theory of existence of light of one electric lamp outside one of the houses is found doubtful because of contradictions created by the prosecution witnesses while leading evidence.

(vii) The delay in FIR is found relevant from two different angles. As per the say of the prosecution, the alleged incident took place on 28th February, 2002 and the complaint is lodged on 06th March, 2002, even then the names of any of the accused are not found in the FIR. For the sake of argument, if the Court assumes that the names of the accused persons would have been mentioned in the FIR lodged on 06th March, 2002, then also the same could have been seen with doubt being a late FIR in a serious incident and in enimical temperament prevailing in riot affected State. When the complainant was able to narrate the incident to the close

relatives or friends and when he was safe in a camp in a village i.e. at Kishangarh, probably in neighbouring area and was knowing accused well, he could have named them.

(viii) Of course, it is not on record but the Court has reason to believe that ennumber of independent officers, social workers, NGOs were there to assist the victims in a camp under protection but it is not brought on record that any of such individual persons were approached with his grievances by the complainant or the witnesses about involvement of these nine people in a serious crime.

4. In this background, if introduction of nine accused persons is made in a statement in the month of May i.e. on 04th May, 2002, it can certainly be viewed with doubts and therefore, it can be said that the ld.trial Judge has rightly appreciated this part of evidence led by the complainant. There are number of contradictions and improvements in the evidence of complainant and his father.

It is rightly appreciated by ld.trial Judge that in such a serious incident, the close relatives and family members of complainant could have supported him in full or in part. However, their evidence is hazy or totally hostile to the case of the prosecution. So it appears that it was not possible for the ld.trial Judge to link the accused with the offence. The ld.trial Judge has given benefit of doubt to the accused by acquitting them.

5. The State has not preferred any appeal against the order of acquittal as submitted by ld. APP Mr.N.C. Sood. Therefore, this is a Criminal Revision Application by a private person and there is a limited scope for exercise of revisional jurisdiction by this Court in view of the decision of the Apex Court in the case ***Shingara Singh v. State of Haryana & Another, reported in 2005 SCC (Cri.) P.870.*** It would be beneficial to refer relevant paras 26 of the said decision wherein the Apex Court has held that it is well settled that in an appeal against the acquittal, the High Court is entitled to

reappreciate the entire evidence on record, but having done so, if it finds that the view taken by the trial Court is a possible reasonable view of the evidence on record, it will not substitute its opinion for that of the trial Court. Only in cases where the High Court finds that the findings recorded by the trial Court are unreasonable or perverse or that the Court has committed a serious error of law, or where the trial Court had recorded its findings in ignorance of relevant material on record or by taking into consideration evidence which is not admissible, the High Court may be justified in reversing the order of acquittal. It is further observed that “in any event, in a case of acquittal if the view of the trial court is a possible reasonable view of the evidence on record, interference by the High Court may not be justified. In para-2 of the decision, the Apex Court has observed that **“in any event a criminal revision preferred by a private party against an order of acquittal could not result in the conviction of the accused.”**

In the case of ***Vimal Singh v. Khuman Singh and Another, 1998 SCC (Cri.)1574,*** while dealing with the powers of the High Court under Sec.401 of Code of Criminal Procedure, 1973, the Apex Court has observed in para:9 as under:-

> *"**9**. Coming to the ambit of power of the High Court under Section 401 of the Code, the High court, in its revisional power does not ordinarily interfere with judgments of acquittal passed by the trial court unless there has been manifest error of law or procedure. The interference with the order of acquittal passed by the trial court is limited only to exceptional cases when it is found that the order under revision suffers from glaring illegality or has caused miscarriage of justice or when it is found that the trial court has no jurisdiction to try the case or where the trial Court has illegally shut out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue has been overlooked. These are the instances where*

the High Court would be justified in interfering with the order of acquittal. Sub-section (3) of Section 401 mandates that the High Court shall not convert a finding of acquittal into one of conviction. Thus, the High court would not be justified in substituting an order of acquittal into one of conviction even if it is convinced that the accused deserves conviction. No doubt, the High Court in exercise of its revisional power can set aside an order of acquittal if it comes within the ambit of exceptional cases enumerated above, but it can not convert an order of acquittal into an order of conviction. The only course left to the High court in such exceptional cases is to order retrial. In fact, sub-section (3) of Section 401 of the Code forbids the High Court in converting the order of acquittal into one of conviction. In view of the limitation on the revisional power of the High court, the High Court in the present case committed manifest illegality in convicting the appellant under Section 304 Part:I and sentencing him to seven years'

rigorous imprisonment after setting aside the order of acquittal."

7. The reasons recorded by the ld. Trial Judge are logical and there is no element of perversity or patent illegality. The Apex Court in a decision in the case of ***Dwarkadas v. State of Hariyana reported in (2002) 1 SCC 204,*** has reiterated the accepted principles of law where it has been held that the judgment and order of acquittal normally should not be reversed merely because the other view is also possible. In the same way, the observations of the Apex Court in the case of ***Kanshiram v. State of Madhya Pradesh (Para-21), AIR 2001 SC 2902*** in respect of appeal against the order of acquittal, positively would help the accused. As per the settled legal position, while appreciating the order of acquittal, the Court should go slow in reversing the order of acquittal unless the order is absolutely illegal and perverse.

8. In view of above observations and decisions cited,

it appears that there is no merit in this Revision Application and hence, the same is hereby dismissed. Rule is discharged.

(C.K. Buch, J)

Aakar/16/8/2005